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APPENDIX A

DISTRICT OF COLUMBIA TAX COURT

Findings of Fact and Opinion

[as filed April 8, 1965]

The petitioner, in the above cases, complains of personal property taxes for the fiscal years ended June 30, 1962, 1963, 1964 and 1965, assessed upon a printing press which it bought as an investment, and which it leased for the purpose of obtaining income therefrom.

Findings of Fact

1.(a) The petitioner is a life insurance company, organized under the laws of the District of Columbia, with its principal office in the District.

(b) The petitioner is licensed to do life insurance business in the District of Columbia.

(c) For the fiscal years here involved, and for a long time prior thereto the petitioner paid the gross premium tax levied by the provisions of Sections 35-105 and 47-1806 of the District of Columbia Code, 1961 Edition.

2.(a) On July 1, 1961, 1962, 1963 and 1964, and for some time prior thereto, the petitioner was and still is the owner of a large printing press, which it purchased as an investment and for the purpose of leasing it in order to obtain revenue or income.

(b) Prior to July 1, 1961, the printing press was, and still is leased to Judd & Detweiler, Inc., a printing company for a ten-year term at a fixed rental, from which the petitioner receives an annual return of six and one-half

per centum of the amount of money invested in the printing press.

3.(a) On June 11, 1964,[1] the assessing authority of the District of Columbia assessed the petitioner a personal property tax on the aforesaid printing press for the fiscal years and in the amounts following:

Fiscal year ended June 30, 1962.....	$ 6,420.88
Fiscal year ended June 30, 1963.....	5,778.78
Fiscal year ended June 30, 1964.....	5,136.70
Total.....	$17,336.36

(b) On June 11, 1964, the petitioner paid the aforesaid personal property taxes.

4.(a) On August 31, 1964, the assessing authority of the District of Columbia assessed the petitioner a personal property tax on the aforesaid printing press for the fiscal year ending June 30, 1965, in the amount of $4,494.60.

(b) On September 29, 1964, the petitioner paid one-half of said tax in the amount of $2,247.30; and on November 12, 1964, paid the other half ($2,247.30).

Opinion

These two cases have been consolidated for hearing and disposition. They are appeals from the assessment of personal property taxes for four fiscal years, namely, those ending June 30, 1962, 1963, 1964 and 1965. The facts, briefly stated, are the following:

Some time prior to July 1, 1961, the beginning or on the tax day of the first of the fiscal years herein involved, the petitioner purchased for investment a large printing press with the intention or purpose of renting it and obtaining income therefrom. It rented the printing press to the printing firm, Judd & Detweiler, Inc., for a ten-year term, still in force, at a fixed rental which produced

[1] Through error the notices of assessment were dated "June 12,-64".

income equal to six and a half per centum on the amount invested in the press.

The assessing authority assessed the petitioner substantial personal property tax on the printing press for the four fiscal years in amounts totaling $21,830.96. The petitioner paid the taxes, and has appealed from the assessments, with a prayer for refund.

The taxes were invalid and must be cancelled with appropriate refund. The purchase of the printing press as an investment was proper. Section 35-535, District of Columbia Code, 1961 Edition, as far as here pertinent, reads as follows:

§ 35-535. *Investment of funds of domestic companies.*

A domestic company shall invest its funds only in——

* * *

(6) * * *

(c) Equipment or machinery for use in transportation, manufacturing, production or distribution, leased or to be leased to any solvent corporation domiciled within the United States or the Dominion of Canada, if the bonds or other evidences of indebtedness, if any, of such corporation are eligible as investments under the provisions of subsection (7) of this section: *Provided, however,* That no company shall invest an amount in excess of 2 per centum of its admitted assets in such equipment or machinery leased or to be leased to any one corporation. * * *

(June 19, 1934, 48 Stat. 1152, ch. 672, Ch. III, § 35; Feb. 3, 1938, 52 Stat. 26, ch. 13, § 12; June 19, 1948, 62 Stat. 480, ch. 503; July 19, 1954, 68 Stat. 494, ch. 546, § 1; Sept. 21, 1959, 73 Stat. 598, Pub. L. 86-329, § 1; Sept. 8, 1960, 74 Stat. 863-866, Pub. L. 86-731, § 1.)

A two per centum net premium tax is levied against insurance companies in the District of Columbia under two

sections of the Code (1961 Edition). They are Sections 35-105 and 47-1806. They are as follows:

35-105—*Statement of Business in the District of Columbia.*

Every insurance company and association doing business in the District of Columbia shall, through its local agents or representatives, furnish to the superintendent, during the month of January of each year, a statement of its business in said District, setting forth specifically the net amount of its premium receipts, the amount of losses paid, the amount of expenses incurred, respecting the business done in the District during the calendar year next preceding, and said superintendent shall preserve a separate record of the same in his office for convenient reference, showing the ratio of such losses and expenses, respectively, to said premium receipts, and all insurance companies of every description, except mutual fire insurance companies, shall pay to the collector of taxes before March first of each year a sum equal to two per centum of said premium receipts of the last preceding calendar year, *in lieu of all other taxes, except taxes upon real estate* and any license fees provided for in sections 35-1201 and 35-1202; and upon the failure of any company to pay said taxes before March first, as aforesaid, the license of said company shall be revoked and a penalty of eight per centum per month shall be charged against the company, which, together with said taxes, shall be collected before said company shall be allowed to resume business. (Mar. 3, 1901, 31 Stat. 1291, ch. 854, § 650; June 30, 1902, 32 Stat. 534, ch. 1329; Aug. 17, 1937, 50 Stat. 676, ch. 690, title II, § 6.) *(Emphasis supplied.)*

47-1806—*Rates on Insurance Companies—Exceptions—Definitions—Marine Insurance Excluded*

All such companies, including companies which issue annuity contracts, shall also pay to the collector of taxes of the District of Columbia a sum

of money as taxes equal to 2 per centum of their policy and membership fees and net premium receipts or consideration received on all insurance and annuity contracts on risks in the District of Columbia, said taxes to be paid before the 1st day of March of each year on the amount of such income for the year ending December 31, next preceding. *Such tax shall be in lieu of all other taxes except (1) taxes upon real estate and (2) fees and charges provided for by the insurance laws of the District including amendments made to such laws by this title. (Emphasis supplied.)*

The respondent's position is ably presented by counsel, but their argument indicates that they have overlooked the fact that investment of money received in premiums is an important element of the life insurance business. A life insurance company, in order to exist and pay benefits under the policies issued by it must invest its funds in property which produces income, whether tangible or intangible. The printing press which it purchased as an investment and which it leased to Judd & Detweiler, Inc. was necessary for its business as an insurance company. The decisions in the cases cited by counsel for the respondent are based upon the premise that the property involved was not necessary to the conduct or operation of the taxpayer corporation. Even the decision in the respondent's strongest authority, *Ford v. Delta and Pine Land Co.*, 164 U.S. 662, which, incidentally, dealt with "exemption", involved property not used by the taxpayer in conducting its business or not necessary thereto. That case does support the admission or concession that the rules relating to "exemption" and "commutation of taxes" are the same.

Section 35-535 of the District of Columbia Code (1961 Edition) was cited to show that the petitioner had the legal authority to invest its funds in the printing press.

What is more important is that the entire Section 35-535 shows what everyone knows,—that insurance companies must invest their funds so that income thereon will be obtained.

Keeping in mind the proposition, as stated by counsel for respondent, that "many of the principles of law relevant to exemptions from taxation are relevant to commutation of taxes", the personal property taxes must be held to be invalid and subject to cancellation under the decision of the United States Court of Appeals in *District of Columbia* v. *National Shrine of the Immaculate Conception,* 114 U.S. App. D.C. 296, 315 F.2d 42, since the purchase, ownership and leasing of the printing press was directly related to the function of the petitioner as a District of Columbia life insurance company.

For the reasons stated the Court holds as follows:

Docket No. 1952. That there were erroneously assessed against and collected from the petitioner, and must therefore be cancelled the personal property taxes for the fiscal years and in the amounts following:

Fiscal year ended June 30, 1962.....	$ 6,420.88
Fiscal year ended June 30, 1963.....	5,778.78
Fiscal year ended June 30, 1964.....	5,136.70
Total.....	$17,336.36

That the petitioner is entitled to a refund of the aforesaid amounts with interest thereon at the rate of 4 per centum per annum from June 11, 1964, to the date of the payment of the refund.

Docket No. 1959. That there was erroneously assessed against, and collected from the petitioner, and must therefore be cancelled, a personal property tax for the fiscal year ending June 30, 1965, in the amount of $4,494.60; and that the petitioner is entitled to a refund thereof with interest thereon at the rate of 4 per centum per annum on $2,247.30 from September 29, 1964, and on

$2,247.30 from November 12, 1964, to date of payment of refund.

Decision will be entered for petitioner.

Jo. V. MORGAN,
Judge

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Caption omitted]

Decided January 17, 1966

Before: WILBUR K. MILLER, Senior Circuit Judge, and DANAHER and LEVENTHAL, Circuit Judges.

PER CURIAM: Respondent, Equitable Life Insurance Company, is a domestic corporation which owns a printing press of a value of approximately $300,000 which the respondent had leased to a local printing company for a 10-year term at a fixed rental. Respondent under the terms of its agreement with its lessee has been receiving an annual rental of 6½ per centum of the money invested in the printing press. The tax authorities of the District of Columbia had assessed personal property taxes against the respondent on June 11, 1964 for the fiscal years ending June 30, 1962, June 30, 1963 and June 30, 1964. Those assessments are in issue in our case No. 19425. In like manner, personal property taxes had been assessed on August 31, 1964 for the fiscal year ending June 30, 1965, as to which identical issues are presented in our case No. 19426. The District of Columbia Tax Court had consolidated the respondent's petition for refunds for purposes of hearing and disposition.

The Tax Court held that domestic insurance companies are authorized to invest their funds in equipment or machinery for leasing to others in accordance with the

provisions of D. C. Code § 35-535(6)(c) (1961). Clearly, an insurance company is not only permitted to invest, but as a matter of economic necessity, it is bound to do so. See *United States* v. *Atlas Life Ins. Co.*, 381 U.S. 233, 247 (1965).

The Tax Court noted that a 2 per centum net premium tax is levied against insurance companies in the District of Columbia pursuant to D. C. Code §§ 35-105 and 47-1806 (1961). Accordingly, the Tax Court held that with certain exceptions, those sections of our Code provide that the 2 per centum premium tax shall be "in lieu of all other taxes." The tax measured by net premiums is plainly in lieu of any franchise tax measured by the income derived from the insurance company's investment in the printing press. We are likewise satisfied that the Tax Court correctly concluded that the personal property taxes for the fiscal years in suit had been erroneously assessed.

In view of the congressional intent as expressed in the cited sections of our Code, the District of Columbia is, in effect, asking the court to say that Congress should have provided some method of taxation other than that so clearly spelled out. As we observed in *District of Columbia* v. *National Shrine, Etc.*, 114 U.S.App.D.C. 296, 298, 315 F.2d 42, 44 (1963): "If the District is dissatisfied with the statute, its remedy is to apply to Congress for an amendment in accordance with its view of what the law ought to be."

Affirmed.[1]

---

[1] We do not direct the recovery of interest on the refunds in view of the stipulation filed in this court July 15, 1965 that if the decision of the District of Columbia Tax Court is affirmed, the judgment ordering refunds shall be without interest.

APPENDIX C

[Caption omitted]

On Petition for Review of Decision of the District of Columbia Tax Court.

Before: WILBUR K. MILLER, Senior Circuit Judge, and DANAHER and LEVENTHAL, Circuit Judges.

JUDGMENT

The District of Columbia Tax Court having held in two Decisions that personal property taxes in the total amount of $21,830.90 had been erroneously assessed against the respondent and having ordered a refund in that amount; the District of Columbia having sought review of the Tax Court's Decisions of April 8, 1965 in its docket No. 1952 as to an erroneous assessment of $17,336.36 and in its docket No. 1959 as to an erroneous assessment of $4,494.60; and this court having considered the arguments and the briefs of respective counsel and the record and the Decisions above mentioned; and being satisfied that there is no error,

It is ORDERED by the court that the Decisions of the Tax Court are affirmed in all respects except as to the award of a refund of interest as to which the parties had stipulated both in the Tax Court and in this court that if such refunds are to be made, interest is not to be awarded; provided however that the respondent shall be entitled to recover its costs in this court.

Per Curiam.

APPENDIX D

STATUTES INVOLVED

1. An Act to establish a code of law for the District; corporations; insurance companies; Act of March 3, 1901,

31 Stat. 1291, ch. 854, section 650, as amended by the Act of June 30, 1902, 32 Stat. 534, ch. 1329 (D.C. Code 1961, § 35-105):

> "STATEMENT OF BUSINESS IN DISTRICT OF COLUMBIA.—Every insurance company and association doing business in the District of Columbia shall, through its local agents or representatives, furnish to the superintendent, during the month of January of each year, a statement of its business in said District, setting forth specifically the net amount of its premium receipts, the amount of losses paid, the amount of expenses incurred, respecting the business done in the District during the calendar year next preceding, and said superintendent shall preserve a separate record of the same in his office for convenient reference, showing the ratio of such losses and expenses, respectively, to said premium receipts, and all insurance companies of every description, except mutual fire insurance companies, shall pay to the collector of taxes before March first of each year a sum equal to one and one-half per centum[1] of said premium receipts of the last preceding calendar year, in lieu of all other taxes, except taxes upon real estate and any license fees provided for in sections six hundred and fifty-four and six hundred and fifty-five; and upon the failure of any company to pay said taxes before March first, as aforesaid, the license of said company shall be revoked and a penalty of eight per centum per month shall be charged against said company, which, together with said taxes, shall be collected before said company shall be allowed to resume business."

2. An Act to require all insurance companies formed

[1] In D. C. Code 1961, § 35-105 "two per centum" has been substituted for "one and one-half per centum," which change the codifier has indicated was made to conform to the Act of August 17, 1937, 50 Stat. 676, ch. 690, title II, § 6, which has been codified as D. C. Code 1961, § 47-1806.

under the provisions of ch. XVIII of the code of law of the District of Columbia to maintain their principal offices and places of business within the District of Columbia, Act of May 17, 1932, 47 Stat. 158, ch. 189 (D.C. Code 1961, § 35-204):

> "'That any corporation now or hereafter formed or organized under any provision of law in force and effect in the District of Columbia to engage in an insurance business shall maintain its principal office within said District * * *.'"

3. An Act to regulate the business of life insurance in the District of Columbia, Act of June 19, 1934, 48 Stat. 1131, ch. 672, Ch. II, section 5, as amended by the Act of February 22, 1958, 72 Stat. 19, Pub. L. 85-334, § 1 (D.C. Code 1961, § 35-404):

> "'It shall be the duty of the Superintendent to issue a certificate of authority to a company when it shall have complied with the requirements of the laws of the District so as to be entitled to do business therein. * * * In each case the certificate shall be issued under the seal of the Superintendent, authorizing and empowering the company to transact the kind or kinds of business specified in the certificate * * *. No company shall transact any business of insurance in or from the District until it shall have received a certificate of authority as authorized by this section and no company shall transact any business of insurance not specified in such certificate of authority.'"

4. An Act to regulate the business of life insurance in the District of Columbia, Act of June 19, 1934, 48 Stat. 1143, ch. 672, Ch. III, section 1 (D.C. Code 1961, § 35-501 (d)):

> "ARTICLES OF INCORPORATION.—Any seven or more persons who desire to become in-

corporated as an insurance company shall make, sign, and acknowledge articles of incorporation before an officer authorized to take acknowledgment of deeds, in which shall be stated:

* * *

(d) The purpose of the company, which shall be restricted to the business of insurance appertaining to persons.

* * * *"

5. An Act to regulate the business of life insurance in the District of Columbia, Act of June 19, 1934, 48 Stat. 1152, ch. 672, Ch. III, § 35, as amended by the Act of September 8, 1960, 74 Stat. 864, Pub. L. 86-731, § 1 (D.C. Code 1961, § 35-535(6)(c)):

"'Section 35. Investment of Funds of Domestic Companies.—A domestic company shall invest its funds only in——

* * *

(c) Equipment or machinery for use in transportation, manufacturing, production, or distribution, leased or to be leased to any solvent corporation domiciled within the United States or the Dominion of Canada, if the bonds or other evidences of indebtedness, if any, of such corporation are eligible as investments under the provisions of subsection (7) of this section: *Provided, however,* That no company shall invest an amount in excess of 2 per centum of its admitted assets in such equipment or machinery leased or to be leased to any one corporation.'"

6. Taxation of personal property, Act of July 1, 1902, 32 Stat. 618, ch. 1352, § 6, par. 2:

"On all tangible personal property, assessed at a fair cash value (over and above the exemptions provided in this section), including vessels, ships, boats, tools, implements, horses, and other animals, carriages, wagons, and other vehicles, there

shall be paid to the collector of taxes of the District of Columbia one and one-half per centum on the assessed value thereof."

The foregoing Act was amended by the Act of June 29, 1922, 42 Stat. 669, ch. 249, which provides in part:

"* * * [T]he Commissioners of the District of Columbia hereby are empowered and directed to ascertain, determine, and fix annually such rate of taxation as will, when applied as aforesaid, produce the money needed to defray the share of the expenses of the District during the year for which the rate is fixed * * *."

The two foregoing provisions have been codified as follows (D.C. Code 1961, § 47-1207):

"On all tangible personal property, assessed at a fair cash value (over and above the exemptions provided in section 47-1208), including vessels, ships, boats, tools, implements, horses, and other animals, carriages, wagons, and other vehicles, there shall be paid to the collector of taxes of the District of Columbia the rate of tax provided by law."

7. Personal property exempt from taxation, Act of July 1, 1902, 32 Stat. 620, ch. 1352, § 6, par. 10; April 28, 1905, 33 Stat. 564, ch. 1815; March 4, 1913, 37 Stat. 1006, ch. 150, § 10; September 1, 1950, 64 Stat. 576, ch. 836, § 3; May 18, 1954, 68 Stat. 112, ch. 218, §§ 605, 1001, 1002; September 4, 1957, 71 Stat. 606, Pub. L. 85-281, § 6 (D.C. Code 1961, § 47-1208):

"The following personal property shall be exempt from taxation.

"First. The personal property of all library, benevolent, charitable, and scientific institutions incorporated under the laws of the United States

or of the District of Columbia and not conducted for private gain.

"Second. Libraries of nonprofit organizations and household belongings located in any dwelling house or other place of abode, or in storage, and boats, not held for sale or rent and not held for use or used in any trade or business. For the purposes of this section, the words 'household belongings' shall include all libraries, schoolbooks, wearing apparel, family portraits, pictures, furniture, furnishings, rugs, silverware, china, glassware, musical instruments, radios, television sets, refrigerators, food, photographic equipment, bicycles, tools, clocks, watches, jewelry, and other articles of personal adornment, and other tangible personal property (excluding automobiles and other motor vehicles) ordinarily kept and used or held for use by the occupant of any dwelling house or other place of abode for the ordinary purposes of life. For the purposes of this section, the words 'trade or business' shall include the engaging in or carrying on of any trade, business, profession, vocation, calling, rental of property, commercial activity, and any other activity carried on or engaged in for livelihood or profit.

[Third. Repealed by the Act of May 18, 1954, 68 Stat. 112, ch. 218, § 1002.]

[Fourth. Repealed by the Act of May 18, 1954, 68 Stat. 112, ch. 218, § 1002.]

"Fifth. Works of art owned by a nonresident of the United States who is not a citizen of the United States lent without charge to the Trustees of the National Gallery of Art solely for exhibition without charge to the general public.

"Fifth. [Sixth.] Any motor vehicle or trailer registered in accordance with the provisions of title IV of the District of Columbia Revenue Act of 1937, as amended (title 40, ch. 1, D.C. Code, 1951 edition), and not comprising any part of the stock in trade of a merchant: *Provided,* That any motor vehicle or trailer comprising all or part of

the stock in trade of any merchant shall continue to be taxed as provided by law: *Provided further,* That special equipment mounted on a motor vehicle or trailer and not used primarily for the transportation of persons or property shall be taxed as tangible personal property as provided by law."

8. Exemption of insurance companies from District of Columbia Income Tax Act of 1939, Act of July 26, 1939, 53 Stat. 1087, ch. 367, title II, § 2(d), as amended by the Act of February 2, 1942, 56 Stat. 42, ch. 33, § 1(a) (D.C. Code 1961, § 47-1502(d)(9)):

"(d) The following organizations shall be exempt from taxation under this title:

• • •

"(9) Banks, insurance companies, building and loan associations, and companies, incorporated or otherwise, which guarantee the fidelity of any individual or individuals, such as bonding companies, which pay taxes on their gross earnings, premiums, or gross receipts under existing laws of the District of Columbia;

• • •"

The Act of July 16, 1947, 61 Stat. 331, ch. 258, Art. I, title I, § 1, repealed the foregoing Act of July 26, 1939, as amended, with respect to taxable years or portions thereof beginning on and after January 1, 1947.

9. Exemption of insurance companies from District of Columbia Income and Franchise Tax Act of 1947, Act of July 16, 1947, 61 Stat. 334, ch. 258, Art. I, title II (D.C. Code 1961, § 47-1554(g)):

"The following organizations shall be exempt from taxation under this Article:

• • •

"(g) Banks, trust companies, building and loan associations, insurance companies, companies which guarantee the fidelity of any individual or individuals, such as bonding companies, and companies which furnish abstracts of title or which insure titles to real estate, all of which pay taxes on their gross earnings, premiums, or gross receipts under existing laws of the District.

* * *."

10. Taxes on insurance companies, Act of August 17, 1937, 50 Stat. 676, ch. 690, title II, § 6, as amended by the Act of May 16, 1938, 52 Stat. 358, ch. 223, § 2 (D.C. Code 1961, § 47-1806):

"All such companies,[2] including companies which issue annuity contracts, shall also pay to the collector of taxes of the District of Columbia a sum of money as taxes equal to 2 per centum of their policy and membership fees and net premium receipts or consideration received on all insurance and annuity contracts on risks in the District of Columbia, said taxes to be paid before the 1st day of March of each year on the amount of such income for the year ending December 31, next preceding. Such tax shall be in lieu of all other taxes except (1) taxes upon real estate and (2) fees and charges provided for by the insurance laws of the District including amendments made to such laws by this title.

"'Net premium receipts or consideration received' means gross premiums or consideration received less the sum of the following:

"1. Premiums received for reinsurance assumed

[2] The phrase "All such companies" is a reference to the companies described in the Act of August 18, 1937, 50 Stat. 675, ch. 690, title II, § 1 (D. C. Code 1961, § 47-1801), which provides in part:

"'* * * every domestic, foreign, or alien company organized as a stock, mutual, reciprocal, Lloyd's, fraternal, or any other type of insurance company or association * * * shall obtain from the superintendent of insurance of the District of Columbia an annual license or certificate of authority, upon payment of a fee of $25 to the Collector of Taxes of the District of Columbia. * * *"

and premiums or consideration returned on policies or contracts canceled or not taken.

"2. Dividends paid in cash or used by the policyholders in payment of renewal premiums.

"Nothing contained in this section or in section 1 or 7 of this title shall apply with respect to marine insurance written within the said District and reported, taxed, and licensed under the provisions of the Act entitled An Act to regulate marine insurance in the District of Columbia, and for other purposes, approved March 4, 1922, as amended."